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Notice of Allowability

Application No.

09/870,807

Examiner

Dionne N Harvey

Applicant(s)

BOESEN

Art Unit

2643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to interview held 9/23/04 & 11/12/04.
2. ☒ The allowed claim(s) is/are 1-21.
3. ☒ The drawings filed on 05/2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 11/12/2004.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

Allowable Subject Matter

The following is an examiner's statement of reasons for allowance:

The prior art of record fails to teach or to fairly suggest a system for hands free voice communication wherein the device includes (1.) a bone conduction microphone, or (2.) a bone conduction microphone in combination with an air conduction microphone; and wherein the device is constructed such that the microphone is placed non-occlusively within the ear canal of the wearer; and wherein the user's voice signals are picked-up by the microphone(s) and transmitted to a personal communication device for processing.

Discussion of Anderson US 5,721,783

The Anderson references was the primary point of discussion in a personal interview held on September 9, 2003 and November 12, 2004, with the applicant-Dr. Peter Boesen, the applicant's representative-Attorney Jeffrey Harty, Supervisory Patent Examiner-Curtis Kuntz, and Examiner-Dionne Harvey.

Anderson was relied upon for teaching all the recited limitations of the claim, with the exception of providing a construction wherein the ear device is fitted within the ear canal in a non-occluding manner. The Examiner initially relied upon **column 26, lines 54-61** of Anderson as teaching the use of a bone conduction microphone for picking up the user's voice and transmitting the user's voice via the secondary wireless link. However, it was discussed in the above mentioned interviews, that Anderson is not teaching the use of a bone conduction sensor, but rather teaches a bone conduction speaker for transmitting those incoming audio signals from the secondary source to the wearer, thereby not transmitting the audio signal via open air.

Dr. Peter Boesen further asserts that by using a bone conduction sensor, as alleged in column 26, lines 54-61, the wireless link will cease to function as a secondary link, and instead will function as the primary link for the device. Based upon this new interpretation of the Anderson reference, which provides that Anderson's recitation of the "earpiece microphone which favors the 'bone conduction' path", is intended to teach a bone conduction speaker, and not a microphone, the Anderson reference cannot be fairly interpreted as anticipating the claimed invention. The claims are therefore allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne N Harvey whose telephone number is 703-305-1111. The examiner can normally be reached on 9-6:30 M-F and alternating Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 703-305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dionne Harvey



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PRIMARY EXAMINER